

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

KASIE STEVENS-BRATTON, individual)	
and on behalf of all other similarly situated,)	
)	
Plaintiff,)	No. 2:15-cv-2472
)	Oral Argument Requested
v.)	
)	
TRUGREEN, INC.,)	
)	
Defendant.)	

DEFENDANT’S MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56.1, Defendant TruGreen, Inc. hereby moves for summary judgment as to Plaintiff’s third, fourth, fifth, and sixth causes of action. Plaintiff’s third and fourth causes of action allege that TruGreen failed to implement adequate procedures to record and honor do-not-call (“DNC”) requests under 47 C.F.R. § 64.1200(d) & 47 U.S.C. § 227(c)(5). *See* Compl. ¶¶ 53-60. Plaintiff’s fifth and sixth causes of action allege that TruGreen initiated more than one telephone solicitation within a 12-month period to her, despite her presence on the National DNC Registry, in violation of 47 C.F.R. § 64.1200(c) and 47 U.S.C. § 227(c)(5). *See* Compl. ¶¶ 62-68. Plaintiff’s third through sixth causes of action are subject to dismissal for the following reasons:

1. Plaintiff cannot present proof to satisfy the elements of her claims under 47 C.F.R. § 64.1200(d) & 47 U.S.C. § 227(c)(5). Contrary to Plaintiff’s allegations, TruGreen did not fail to establish procedures for maintaining a list of persons who request not to receive telemarketing calls. Instead, TruGreen fastidiously recorded, maintained, and honored DNC

requests from existing and prospective customers. These undisputed facts require dismissal of Plaintiff's third and fourth causes of action.

2. Plaintiff cannot dispute the material facts establishing TruGreen's compliance with the statutory safe harbor under 47 C.F.R. § 64.1200(c) & 47 U.S.C. § 227(c)(5). TruGreen maintained a robust set of policies, procedures, and training designed to prevent improper telephone solicitations to individuals on the National DNC Registry. These undisputed facts require dismissal of Plaintiff's fifth and sixth causes of action.

In support of this motion, TruGreen relies on its contemporaneously-filed Memorandum and Statement of Undisputed Material Facts.

Respectfully Submitted,

s/ George T. Lewis III

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Counsel for Defendant TruGreen, Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on September 12, 2018, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notification to the attorneys of record in this matter who are registered with the Court's CM/ECF system.

s/ George T. Lewis, III